

Message Text

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ACTION L-03

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TO SECSTATE WASHDC IMMEDIATE 7488

C O N F I D E N T I A L BERN 1314

E. O. 11652: XGDS 1

TAGS: EFIN, PFOR, US, SZ

SUBJ: JUDICIAL ASSISTANCE TREATY: VIEWS OF SWISS TECHNICAL
LEVEL GROUP ON CHANGES NECESSARY IN TREATY DRAFT

REF: STATE'S 067422, APRIL 19, 1972

SUMMARY. SWISS HAVE INFORMALLY GIVEN US CHANGES IN DRAFT JUDICIAL ASSISTANCE TREATY THAT SWISS TECHNICAL LEVEL GROUP WILL RECOMMEND TO AMBASSADOR WEITNAUER AND, WITH HIS APPROVAL, TO SWISS FEDERAL COUNCIL. CHANGES ARE DESIGNED TO PROVIDE SAFEGUARD AGAINST HARRASSMENT BEFORE JUDICIAL ASSISTANCE REQUEST IS PENDING, FURTHER PROTECTION OF BANKING AND BUSINESS SCRETS, CLEARER UNDERSTANDING OF INTENT OF REFERENCE TO POLITICAL ACTIVITIES OF ORGANIZED CRIMINAL GROUPS, AND BETTER WORDING OF ARTICLE 5(3). THESE INFORMAL COMMENTS HAVE BEEN GIVEN US TO GIVE USG MORE TIME TO CONSIDER THEM, AND MARKEES ASKED WHETHER SWISS WILL RECEIVE EARLY ADVICE OF MATTERS USG PLANS TO RAISE IN NEXT ROUND OF TALKS. ACTION REQUEST: PLEASE ADVISE REPLY TO SWISS. END SUMMARY.

1. MARKEES APPROACHED US TODAY TO SAY THAT SWISS TECHNICAL LEVEL GROUP (NUSSBAUMER, MARKEES, AND PFUND OF SWISS TAX ADMINISTRATION) HAS COMPLETED WORK ON JUDICIAL ASSISTANCE TREATY AND CAN " VERY INFORMALLY" ADVISE US OF
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CHANGES IN TREATY DRAFT THAT IT WILL RECOMMEND TO AMBASSADOR ALBERT WEITNAUER AND, WITH HIS APPROVAL, TO SWISS FEDERAL COUNCIL. HE IS REASONABLY CONFIDENT THAT WEITNAUER WILL PROPOSE NO ADDITIONAL CHANGES; HOWEVER, HE COULD NOT SPEAK FOR FEDERAL COUNCIL.

2. PROPOSED CHANGES, WHICH ORIGINATE IN VORORT, SWISS BAR ASSOCIATION AND SWISS BANKERS ASSOCIATION, FOLLOW:

A. ADDITION OF ARTICLE TO END OF CHAPTER 1, PROVISIONALLY TO BE KNOWN AS ARTICLE 5 BIS, TO PROVIDE SAFEGUARD AGAINST HARRASSMENT OR THREAT OF HARRASSMENT BY REQUESTING STATE OF PERSONS IN REQUESTED STATE WHO REFUSE VOLUNTARY COOPERATION. MARKEES SAYS THAT CONCERN ON THIS POINT IS RESULT OF INDIRECT PRESSURE APPLIED RECENTLY BY US AGENCIES OR COURTS IN EFFORT TO PRESSURE SWISS CITIZENS TO COOPERATE VOLUNTARILY IN INVESTIGATIONS OR JUDICIAL PROCEEDINGS IN US. MARKEES SUGGESTS THAT PROPOSED ARTICLE 5 BIS BE DRAFTED IN SENSE OF ARTICLE 19(5-6). SAFEGUARD WOULD APPLY ONLY IN CASES OF FAILURE TO RENDER VOLUNTARY COOPERATION; ONCE ALL CONDIDTIONS OF TREATY ON JUDICIAL ASSISTANCE HAD BEEN MET, PERSON COULD BE COMPELLED TO TESTIFY.

B. FURTHER PROTECTION OF BANKING AND BUSINESS SECRETS COMMUNICATED TO REQUESTING STATE UNDER ARTICLE 10(2). MARKEES SAYS SWISS GOVERNMENT IS CONSIDERING EITHER OF TWO APPROACHES. ONE WOULD BE TO DELETE PARA (C) IN STATEMENT OF UNDERSTANDING OF INTERPRETATIONS OF ARTICLE 5. (IN STATE' S 067422, APRIL 19, 1972, THIS PARA READS: "(C) THE LIMITATIONS ON USE SET FORTH IN ARTICLE 5 ARE NOT INTENDED TO RESTRICT THE USE OF INFORMATION WHICH HAS BECOME PUBLIC ANY MORE THAN THE USE OF INFORMATION WHICH HAS BECOME PUBLIC WOULD BE RESTRICTED IN THE REQUESTED STATE." ALTERNATE APPROACH WOULD BE TO ADD ARTICLE TO TREATY PROVIDING FURTHER ASSURANCES THAT MATERIAL COMMUNICATED TO REQUESTING STATE UNDER ARTICLE 10(2) WOULD BE TREATED AS CONFIDENTIAL AND WOULD BE INTRODUCED AS EVIDENCE IN COURT IN CAMERA AND MADE AVAILABLE ONLY TO COURT, DEFENSE COUNSEL, AND JURY, AND BE SEALED AFTER HAVING BEEN INTRODUCED.

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C. MARKEES SAYS THAT SWISS UNDERSTAND THAT INTENT

OF REFERENCE TO POLITICAL ACTIVITIES OF ORGANIZED CRIMINAL GROUPS IN ARTICLE 6(3) IS TO PREVENT THESE GROUPS FROM OBTAINING INFLUENCE IN POLITICS FOR THE PURPOSE OF GAINING PROTECTION FROM PROSECUTION. SWISS WOULD LIKE TO CHANGE ARTICLE 6(3) AND 6(3) (A) AS FOLLOWS:

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